

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24311 of 2002

Between:

M.Veera Reddy s/o Koti Reddy
Temples of Doppalapudi Ponnuru.,
Guntur District.

..... PETITIONER

AND

- 1 Commissioner of Endowments Dept.of Endowments.,Hyderabad.
- 2 Deputy Commissioner of Endowments, Dept.of Endowments.,Guntur.
- 3 Asst.Commissioner of Endowments Dept.of Endowments.,Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ order or direction more particularly one in the nature of Writ of mandamus declaring the action of the 1st respondent herein in directing respondents 2 and 3 to revise seniority of Petitioner herein while taking into consideration of his date of entry into service as 4-1-1989 instead 1-6-1984 as arbitrary, illegal, unjust, discriminatory besides being violative of principles of natural justice and violative of fundamental rights guaranteed to petitioner under Art.14,16 and 21 of Constitution and consequently set aside the said direction of 1st respondent directing respondents 2 and 3 herein to revise seniority of the petitioner herein.

Counsel for the Petitioner : MR.K.R.PRABHAKAR

Counsel for the Respondents : GP FOR ENDOWMENTS

The Court made the following :

ORDER:

This writ petition is filed to issue an appropriate Writ, Order or Direction more particularly, one in the nature of Writ of Mandamus, declaring the action of the 1st respondent herein in directing respondents 2 and 3 to revise seniority of petitioner while taking into consideration of his date of entry into service as 4.1.1989 instead of 1.6.1984 as arbitrary, illegal, discriminatory, with a consequential direction to the 1st respondent with a direction to the respondents 2 and 3 to revise the seniority of petitioners.

The brief facts that are necessary for disposal of the present writ petition may be stated as follows:

The petitioner was appointed as a Clerk in Sri Laxmi Narasimha Swami Temple, Tottempudi village, on a consolidated pay and accordingly he worked as a Clerk in the said temple till 1988. Thereafter, he was appointed as a Clerk in Prattipadu Group of Temples in pursuance of the orders of the 2nd respondent dated 29.06.1988. He has joined as a Clerk in the said group of temples with effect from 2.1.1989. While so, he was transferred to Yajali & Appikatla Group Temples in the year 1990 by the 3rd respondent herein. The 3rd respondent herein, in his proceedings dated 27.05.1997, treated the petitioner's earlier services with effect from 1.6.1984 as the date of entry into service without monetary benefits. The same is reiterated by the 3rd respondent herein while recommending his case for the post of Executive Officer, to the 1st respondent herein, in his proceedings dated 24.11.2000. While so, he was appointed as Person-in-Management (in the cadre of Executive Officer) till 12.02.2002. The 1st respondent herein in his proceedings dated 8.2.2002, directed the 2nd respondent herein to keep the petitioner under suspension on the ground that his appointment was irregular. Thereafter, the 1st respondent Commissioner, in his proceedings dated 5.3.2002, appointed an enquiry officer to enquire into the irregular appointments of various candidates including the petitioner. In reply to the enquiry notice, the petitioner submitted his explanation to the Commissioner of Endowments, the 1st respondent through the Enquiry Officer. After conducting a detailed enquiry, the Enquiry Officer recommended the Commissioner to drop the charges on petitioner's appointment. The 1st respondent herein, accepting the recommendations made by the Enquiry Officer, passed an

order dated 17.08.2002, directing the authorities concerned to reinstate the petitioner into service, accepting the recommendations made by the Enquiry Officer. The Commissioner has also directed the 2nd and 3rd respondents to revise his seniority, taking into consideration the date of his entry into service as 4.1.1989 instead of 1.6.1984. The petitioner is aggrieved of the above orders of the 1st respondent and challenging the same, the present writ petition is filed.

The petitioner further contended that the respondent authorities have prepared the seniority list in the cadre of clerk, which is equivalent to Junior Assistant while taking into consideration of his initial entry into service as 1.6.1984 and the same became final. He was promoted to the post of Executive Officer (Person-in-Management). The 3rd respondent herein is competent authority to decide the seniority of Executive Officers within the District. The Seniority list finalized by the 3rd respondent should be approved by the 1st respondent herein. The 1st respondent earlier approved the seniority list. By virtue of the impugned proceedings, the 1st respondent has no power or authority since the 3rd respondent is the original authority to decide the seniority among the Executive Officers including the persons working as Person-in-Management.

Learned Counsel appearing for the petitioner contended that the petitioner was initially appointed on 01.06.1984 by the competent authority, but his appointment was ratified by the Assistant Commissioner in the year 2000. In the regular departmental enquiry, the findings of the enquiry Officer have been accepted and therefore the services of the petitioner are to be reckoned from the date of initial appointment on 01.06.1984 and that the Commissioner has no power under Section 37 of the Endowments Act to issue the impugned direction and it suffers from serious illegality in view of the fact that without any further enquiry or without issuing any notice to the writ petitioner, impugned proceedings have been passed and therefore he prays to allow the writ petition.

On the other hand, the learned Counsel appearing for the respondent contended that the appointment of the petitioner in the year 1984 is irregular as there was no sanctioned post. Initially the petitioner was alleged to have been appointed by the Hereditary Trustee on 1.6.1984 but later, on the application of the petitioner only, he was appointed in the Pathipadu Group of Temples. Therefore, it is a fresh appointment, which came into effect from 4.1.1989 onwards and therefore the

services rendered by the petitioner in some other temple, cannot be taken into consideration. Hence, he prays to dismiss the writ petition.

As seen from the proceedings of the Hereditary Trustee dated 1.6.1984, the petitioner was appointed as a Clerk in Sri Lakshmi Narasimha Swamy Temple, Thottempudi, Guntur District on a monthly consolidated salary of Rs.30/-. As per the proceedings dated 12.12.1991 issued by the Assistant Commissioner, the petitioner was transferred and posted as Junior Assistant in Modukuru Group of Temples. The proceedings dated 24.11.2000 would go to show that the services of the individual who worked as Clerk of Lakshmi Narasimha Swamy Temple from 1.6.1984, was treated as date of entry into temple service without any monetary benefits by the then Assistant Commissioner, Endowments Department, Guntur in his letter dated 27.05.1997. From the date of entry into the temple service i.e. 1.6.1984, the individual is continuing till today without any break of service. Hence, his date of entry into the temple service is 1.6.1984 and his name was placed at Serial No.15 of the seniority list of Junior Assistants of Guntur District.

A regular departmental enquiry is ordered against the petitioner for making false entries and the appointment of the petitioner by the Hereditary Trustee temple is highly irregular and illegal. A detailed enquiry has been conducted by the Enquiry Officer, who gave a finding that opening of two service registers by the delinquent by working in two different temples, is highly irregular. The orders of the Assistant Commissioner, Endowments Department, Guntur in treating the service of Clerk i.e., delinquent from 1.6.1984 is irregular. The service from 1.6.1984 to 3.1.1989 needs to be cancelled and the earlier Service Register opened by the Hereditary Trustee of Thottempudi Group of temples needs to be cancelled. There is no fabrication of Service Register and the charge is held proved. But instead of taking any disciplinary action, the disciplinary authority took a decision to drop further action against the charged officer.

It is the case of the petitioner that he was appointed as a Clerk in the establishment of Lakshminarasimha Swamy temple, as per the orders of the Hereditary Trustee on 1.6.1984. On an application filed by the petitioner dated 2.1.1989 to the Executive Officer, Pathipadu Group of Temples, the Executive Officer appointed him as a Junior Assistant in the vacancy caused due to resignation of one K.Nageswara Reddy. Therefore, under no stretch of imagination, it can be said that it

is a transfer from Lakshmi Narasimha Swamy Temple, Thottempudi, Guntur District to Pathipadu Group of temples. It is a fresh appointment. When it is a fresh appointment, the date of entry into service has to be taken from the date of fresh appointment. Since the petitioner himself admitted to have reported for duty as Clerk in the group of temples, Pathipadu on 4.1.1989, his service has to be reckoned from that date only. The contention of the learned Counsel for the petitioner that the Assistant Commissioner in his proceedings dated 25.7.1997 and 12.12.1991, took the initial date of entry into service as 1.6.1984, cannot be accepted in view of the fact that the Assistant Commissioner has no authority to treat the service rendered by an individual entirely in a group of temples in view of the fact that the appointment of the petitioner is a fresh appointment. So, those two proceedings are beyond the jurisdiction of the Assistant Commissioner of Endowments Department, Guntur. They will not help the petitioner for the purpose of noting the initial entry of the petitioner into Lakshmi Narasimha Swamy temple as 1.6.1984. The contention of the petitioner can be accepted as true, if the petitioner, after appointment in the Modukuru Group of Temples on 1.6.1984, is transferred to Pathipadu Group of Temples. Then the date of initial entry into service has to be taken into consideration for the purpose of counting the seniority. Here is a case where the appointment itself is a fresh appointment made on 4.1.1989.

The next contention is that the Commissioner has no power under Section 37 of the Act, to issue such a direction to the respondents 2 and 3 to fix the seniority.

Section 35(3) of the Endowments Act reads as follows:

Every office holder or servant including Pedda Jeeyangar, Chinna Jeeyangar and Mirasidar, Archaka and Pujari whether hereditary or not holding office as such on the date of commencement of this Act, shall continue as such office holder or servant and notwithstanding any scheme, judgment, decree or order of a Court, Tribunal or other authority or any agreement or custom or usage relating to the payment of any perquisites, emoluments or remuneration, either in cash or kind or both, before the commencement of this Act, be paid only such emoluments as maybe prescribed.

Provided that it shall be lawful for the Government to direct such office holders and servants as they may consider necessary to acquire such qualifications and to undergo training in such manner, for such period and on such terms as may be prescribed.”

This provision has no application to the present facts of the case, because even the 1st respondent treated the initial entry of the petitioner from the date of fresh appointment i.e. 4.1.1989. Under Section 38 of the Act, the Commissioner is competent to give instructions to any office-holder or servant attached to an institution or endowment that has not been dealt with suitably by the trustee or the Executive Officer and may direct the Executive Officer to take any action. Therefore, Section 38 of the Act gives power to the Commissioner to take any action. Simply because the Disciplinary Authority has not taken any action, that does not mean the petitioner is entitled for service with effect from the date of his first appointment in Modukuru Group of Temples. In view of the fact that he was appointed afresh with effect from 4.1.1989 in Modukuru Group of temples, his service has to be reckoned and determined with reference to the fresh appointment but not from the date of his previous employment, unless he was transferred from the place where he was initially appointed. It is not a case of transfer from the place where he was initially appointed in the year 1989.

The other contention raised by the learned Counsel for the petitioner is that without conducting any enquiry or without giving any notice to him, the impugned order has been passed. A detailed enquiry has been conducted by the Executive Officer, whereunder it is clearly stated that the proceedings of the Assistant Commissioner is irregular and therefore the service rendered by the petitioner from 1.6.1984 to 3.1.1989 has to be canceled. Therefore, after following proper procedure, the enquiry officer has submitted his report. Though the findings were not accepted by the Disciplinary Authority for taking any Disciplinary action, but that does not mean that the findings of the Enquiry Officer are to be wiped out from the record. In any view of the matter, as the petitioner was appointed as a Junior Assistant with effect from 4.1.1989, his service has to be reckoned from that only.

Therefore, the writ petition is devoid of merit and is dismissed accordingly. No order as to costs.

(K.C.BHANU, J)

Dated:27.06.2005

MRKR

To

- 1 The Commissioner of Endowments Dept.of Endowments.,Hyderabad.
- 2 The Deputy Commissioner of Endowments, Dept.of Endowments.,Guntur.
- 3 The Asst.Commissioner of Endowments, Endowments Department,
Hyderabad.

4 Two C.Cs to the Government Pleader for Endowments, High Court Buildings,
Hyderabad.

5 Two C.D.copies.

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